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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1H 2008 392

ALBERT DALE BIETH
13064 Borden Road
Herald, CA 95638

A C C U S A T I O N

Respiratory Care Practitioner License No. 755
Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about April 19, 1985, the Respiratory Care Board issued Respiratory Care Practitioner License Number 755 to Albert Dale Bieth (Respondent). The license is current and active and will expire on April 30, 2009.

JURISDICTION

3. This Accusation is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 3710 of the Code states: “The Respiratory Care Board of
2 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
3 8.3, the Respiratory Care Practice Act].”

4 5. Section 3718 of the Code states: “The board shall issue, deny, suspend,
5 and revoke licenses to practice respiratory care as provided in this chapter.”

6 6. Section 3750 of the Code states:

7 “The board may order the denial, suspension or revocation of, or the imposition of
8 probationary conditions upon, a license issued under this chapter, for any of the following
9 causes:

10 “(f) Negligence in his or her practice as a respiratory care practitioner.”

11 “(g) Conviction of a violation of any of the provisions of this chapter or of any
12 provision of Division 2 (commencing with Section 500), or violating, or attempting to
13 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
14 violate any provision or term of this chapter or of any provision of Division 2
15 (commencing with Section 500).”

16 “(j) The commission of any fraudulent, dishonest, or corrupt act which is
17 substantially related to the qualifications, functions, or duties of a respiratory care
18 practitioner.”

19 “(o) Incompetence in his or her practice as a respiratory care practitioner.”

20 7. Section 726 of the Code states:

21 “The commission of any act of sexual abuse, misconduct, or relations with a
22 patient, client, or customer constitutes unprofessional conduct and grounds for
23 disciplinary action for any person licensed under this division, under any initiative act
24 referred to in this division and under Chapter 17 (commencing with Section 9000) of
25 Division 3.”

26 8. Section 3755 of the Code states:

27 “The board may take action against any respiratory care practitioner who is
28 charged with unprofessional conduct in administering, or attempting to administer, direct

1 or indirect respiratory care. Unprofessional conduct includes, but is not limited to,
2 repeated acts of clearly administering directly or indirectly inappropriate or unsafe
3 respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or
4 monitoring techniques, and violation of any provision of Section 3750. The board may
5 determine unprofessional conduct involving any and all aspects of respiratory care
6 performed by anyone licensed as a respiratory care practitioner.”

7 9. California Code of Regulations, title 16, section 1399.370, states:

8 “For the purposes of denial, suspension, or revocation of a license, a crime or act
9 shall be considered to be substantially related to the qualifications, functions or duties of
10 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
11 perform the functions authorized by his or her license or in a manner inconsistent with the
12 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
13 those involving the following:

14 “(a) Violating or attempting to violate, directly or indirectly, or assisting or
15 abetting the violation of or conspiring to violate any provision or term of the Act.”

16 COST RECOVERY

17 10. Section 3753.5, subdivision (a) of the Code states:

18 "In any order issued in resolution of a disciplinary proceeding before the board,
19 the board or the administrative law judge may direct any practitioner or applicant found to have
20 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
21 investigation and prosecution of the case."

22 11. Section 3753.7 of the Code states:

23 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
24 include attorney general or other prosecuting attorney fees, expert witness fees, and other
25 administrative, filing, and service fees."

26 12. Section 3753.1 of the Code states:

27 "(a) An administrative disciplinary decision imposing terms of probation may
28 include, among other things, a requirement that the licensee-probationer pay the monetary costs

1 associated with monitoring the probation. "

2 FIRST CAUSE FOR DISCIPLINE

3 (Sexual Misconduct/Corrupt Act)

4 13. Respondent is subject to disciplinary action under code sections 3750(j)
5 [corrupt act] and section 726 [sexual misconduct/abuse] in that he engaged in inappropriate
6 sexual contact with a patient. The circumstances are as follows:

7 14. On or about April 10, 2008, Patient A. arrived at Sutter Amador Hospital
8 for an EKG examination in preparation for surgery to remove her breast implants. Respondent
9 was the respiratory care practitioner assigned to administer the EKG to Patient A. Respondent
10 led Patient A. to a room, instructed Patient A. to remove her clothing from the waist up and
11 handed her a gown to wear, which was open in the back. Patient A. did as instructed.
12 Respondent returned and asked Patient A. why she needed the EKG. Patient A. informed
13 Respondent that the scheduled surgery was to replace her breast implants which had hardened.

14 15. Respondent asked Patient A., "Can I touch?" and before she could
15 respond, Respondent touched her right breast near her nipple, using his forefingers. Respondent
16 then asked Patient A., "Can I take a look?" Before she could respond, he lifted her gown and
17 exposed her breasts for three to five seconds. After the EKG exam was done, Respondent said to
18 Patient A: "You have to come back and show me when you are done."

19 16. On April 11, 2008, Patient A. returned to Sutter Amador Hospital for lab
20 work. Respondent saw Patient A. and informed her that her EKG test taken on April 10, 2008
21 was incorrect, and that he needed to perform the test again. Patient A. agreed to allow
22 Respondent to perform another EKG exam, as she did not want to delay her scheduled surgery.

23 17. On or about April 16, 2008, Patient A. returned to the Health Information
24 Systems (HIS) Department at Sutter Amador Hospital and requested a copy of the EKG which
25 Respondent performed on April 11, 2008. HIS had no record of the second EKG test results.

26 18. On or about April 17, 2008, during an interview with Human Resources
27 personnel, Respondent admitted that he touched Patient A.'s breasts and apologized for doing so.
28 He admitted that on April 11, 2008, he performed a second EKG test on Patient A. He claimed

1 that he thought he made a mistake on the EKG performed on April 10, 2008. He stated that he
2 destroyed the April 11, 2008 EKG test results because when he checked the EKG test results
3 performed on April 10, 2008, he saw that the test was performed correctly.

4 19. Respondent is subject to disciplinary action under code sections 726 and
5 3750(j) in that he inappropriately touched Patient A.'s breasts which was not a part of her
6 respiratory treatment.

7 SECOND CAUSE FOR DISCIPLINE

8 (Negligence; Incompetence)

9 20. The allegations contained in paragraphs 14 through 18 are incorporated
10 herein.

11 21. Respondent is subject to disciplinary action under code sections 3750(f)
12 {negligence} and 3750(o) [incompetence] in that he inappropriately touched Patient A.'s breasts
13 which was not a part of her respiratory treatment.

14 THIRD CAUSE FOR DISCIPLINE

15 (Negligence/Incompetence)

16 22. The allegations contained in paragraphs 14 through 18 are incorporated
17 herein.

18 23. Respondent's actions in requiring Patient A. to take a second, unnecessary
19 EKG test on April 11, 2008 and/or then destroying the EKG test results constitutes negligence in
20 violation of code section 3750(f) and/or incompetence in violation of code section 3750(o).

21 FOURTH CAUSE FOR DISCIPLINE

22 (Fraudulent, Dishonest or Corrupt Act)

23 24. The allegations contained in paragraphs 14 through 18 are incorporated
24 herein.

25 25. Respondent's actions in requiring Patient A. to take a second, unnecessary
26 EKG test on April 11, 2008 and/or then destroying the EKG test results constitutes a fraudulent,
27 dishonest or corrupt act in violation of code section 3750(j).

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Unprofessional conduct)

3 26. The allegations contained in paragraphs 14 through 18 are incorporated
4 herein.

5 27. Respondent's actions as described hereinabove in the First, Second, Third
6 and/or Fourth Cause for Discipline constitute unprofessional conduct in violation of code section
7 3755.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein
10 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

11 1. Revoking or suspending Respiratory Care Practitioner License Number
12 755, issued to Albert D. Bieth.

13 2. Ordering Albert D. Bieth to pay the Respiratory Care Board the costs of
14 the investigation and enforcement of this case, and if placed on probation, the costs of probation
15 monitoring;

16 3. Taking such other and further action as deemed necessary and proper.
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18 DATED: April 16, 2009
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21 Original signed by Colleen Whitestine for:
22 STEPHANIE NUNEZ
23 Executive Officer
24 Respiratory Care Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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